

# **PLANNING COMMITTEE**

**Council of the County of Maui**

## **MINUTES**

**October 31, 2013**

**Council Chamber, 8<sup>th</sup> floor**

**CONVENE:** 9:01 a.m.

**PRESENT: VOTING MEMBERS:**

Councilmember Donald G. Couch, Jr., Chair

Councilmember Gladys C. Baisa (out 9:41 a.m., in 9:43 a.m., out 10:47 a.m.,  
in 11:20 a.m., out 11:55 a.m.)

Councilmember Elle Cochran (in 9:02 a.m.)

Councilmember Stacy Crivello

Councilmember Don S. Guzman (out 10:13 a.m., in 10:23 a.m., out 11:08 a.m.,  
in 11:18 a.m.)

Councilmember Mike White (out 10:02 a.m., in 10:07 a.m.)

**EXCUSED: VOTING MEMBERS:**

Councilmember Michael P. Victorino, Vice-Chair

**STAFF:** Regina Gormley, Legislative Attorney  
Yvette Bouthillier, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference  
bridge)

Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference  
bridge)

Dawn Lono, Council Aide, Hana Council Office (via telephone conference  
bridge)

**ADMIN.:** Michele McLean, Deputy Director, Department of Planning  
Joseph Alueta, Administrative Planning Officer, Department of Planning  
Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation  
Counsel

Seated in the gallery:

William Spence, Director, Department of Planning

**OTHERS:** Ryder Swatek (PC-5)

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Dr. Michael Reiley, President, HNU Energy (representing Eskimo Candy)  
(PC-5)  
Tom Croly, Maui Vacation Rental Association (PC-23)  
Netra Halperin (PC-23)  
Sydney Smith (PC-23)  
Annette Niles (PC-23)  
Jeff Hansen (PC-5)  
Catherine Clark, Maui Vacation Rental Association (PC-23)  
Others (3)

**PRESS:** Akaku: Maui Community Television, Inc.

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**CHAIR COUCH:** . . . (*gavel*) . . . Will the Planning Committee meeting of October 31<sup>st</sup>--Happy Halloween, everybody--please come to order?

**COUNCILMEMBER BAISA:** Happy Halloween.

**CHAIR COUCH:** You may notice some different attire today, but that's to be expected on today. My name is Don Couch; I'm the Chairman of this Committee. And with us today are our Committee voting Members. First, we have Council Chair, Gladys Baisa. Good morning.

**COUNCILMEMBER BAISA:** Good morning, also known as the Duck Dynasty.

**CHAIR COUCH:** Duck Dynasty, yes; should've stayed in costume.

**COUNCILMEMBER BAISA:** I couldn't stand the heat.

**CHAIR COUCH:** Okay.

**COUNCILMEMBER BAISA:** Too much hair, thank you.

**CHAIR COUCH:** And joining us today, as well, is Councilmember Stacy Crivello. Good morning.

**COUNCILMEMBER CRIVELLO:** Good morning, Chair.

**CHAIR COUCH:** Councilmember Mike White, good morning.

**COUNCILMEMBER WHITE:** Chair.

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CHAIR COUCH: And Councilmember Don Guzman, good morning.

COUNCILMEMBER GUZMAN: Happy Halloween, Chair.

CHAIR COUCH: Happy Halloween. Also with us is Staff...I mean, sorry, the Administration. Will Spence, is he coming? Joe, do you know? Okay. We, at least, have Joe Alueta and Michael Hopper from Deputy Corporation Counsel. And, of course, Committee Staff Attorney, Gina Gormley; and --

MS. GORMLEY: Good morning.

CHAIR COUCH: --good morning--and Committee Secretary, Yvette Bouthillier.

MS. BOUTHILLIER: Good morning.

CHAIR COUCH: Good morning. Members...and we have...Member Cochran is here as well. So, excused today, our Vice-Chair Victorino and that's it. Okay. Everybody, turn off your cells; turn 'em into silent mode or vibrate mode. And, Members, today we've got three items on our agenda: PC-5, which is the B-2 Community Business District; PC-8, which is the B-R Resort Commercial District; and PC-23, Establishing Short-Term Rental Homes as an Agricultural Tourism Activity in Agricultural Districts. Assisting us today, this morning, from the Hana District Office is Dawn Lono. Let's get them on. Hana District Office, Dawn Lono, good morning.

MS. LONO: Good morning, this is Dawn.

CHAIR COUCH: Okay. And then from the Lanai District Office is Denise Fernandez.

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez from Lanai.

CHAIR COUCH: Good morning. And from the Molokai District Office is Ella Alcon.

MS. ALCON: Good morning, Chair. This is Ella Alcon on Molokai.

CHAIR COUCH: Good morning, ladies; and Happy Halloween to you as well, hopefully you're in costume. Alright, Members, we're ready to accept public testimony for the individuals who will be testifying in the Chamber, you have three minutes to testify. We'll be using the lighting system. Ah, Michele McLean.

MS. McLEAN: Michele the good witch.

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CHAIR COUCH: Michele the good witch, okay, is joining us from the Administration as the Deputy Director of Planning.

MS. McLEAN: Good morning.

CHAIR COUCH: Good morning.

COUNCILMEMBER BAISA: Good morning, we love it.

CHAIR COUCH: . . . *(Laughter)* . . . Excuse me. We're going to start public testimony. Anybody who wants to testify, please sign up in the back. And you have three minutes to testify. You can only testify on what's on the agenda today. And we're gonna have a lighting system. You'll get three minutes on green, and then you get one more minute on yellow. And then when it turns red, please finish your remarks so we can move on with the meeting. Members, without objection, I will start public testimony.

COUNCIL MEMBERS: No objections.

**. . .BEGIN PUBLIC TESTIMONY. . .**

CHAIR COUCH: Okay. First testifier is Ryder Swatek. And when you get up there, please state your name and who you're representing, if anybody. And following Mr. Swatek is Dr. Michael Reiley.

MR. SWATEK: Good morning. My name is Ryder Swatek, and I'm here on my own behalf testifying on the B-2 zoning amendment. I'd like to start by saying, I think the original intent of the B-2 zoning was basically a light industrial area to promote, you know, the services and goods for the community. One of the...the harder things to predict, in the past, would've been energy production systems, especially, you know, 30 to 40 years ago or even just 10 years ago and how that could benefit the community and be considered a value in such a district. So I'm here to support that change and ask that you guys consider that as a valued piece. The zoning currently allows things, such as bowling alleys, miniature golf, among a long list that's on the docket which don't mean to devalue; but in our age and our time when we're looking at energy production as a possible use in the B-2 zoning district, I think just the very nature of it kinda trumps some of those current designations and is a value to consider. Some of the specific language in the docket is a bit vague, and I would ask that it be tightened up a little bit. Currently, "small scale" is put in there, small scale energy productions; perhaps, it could be made consistent with MECO's standards that, you know, maybe it's a 100 KW system or, you know, defined a little bit more. Let's see. I think that's all I have for now. Thank you.

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CHAIR COUCH: Thank you, Mr. Swatek. Members, any questions of the testifier? I have one. You're referring to, also...I mean I believe we are allowing small scale in B-2, but I also I believe we're allowing it to be on two different properties. One, you can put the system up on one property to serve another. I think it's adjacent or within a certain amount of feet, I believe.

MR. SWATEK: Correct.

CHAIR COUCH: Is that what you're supporting?

MR. SWATEK: I'm supporting that intent, too.

CHAIR COUCH: Okay.

MR. SWATEK: And I think it, you know, it's relatively like a neighboring lot or a lot across the street.

CHAIR COUCH: Uh-huh.

MR. SWATEK: And, again, this is to...as an accessory use or to serve a lot with energy production.

CHAIR COUCH: Okay.

MR. SWATEK: Yeah.

CHAIR COUCH: Thank you. Members, any further questions? Hearing none, thank you.

MR. SWATEK: Thank you.

CHAIR COUCH: Next up is Dr. Michael Reiley and followed by Tom Croly.

MR. REILEY: Good morning, Chair. Good morning, Council members. Thank you for the opportunity. I'm here to testify on behalf of PC-5, and I'm here on behalf of my client, Jeff Hansen, the owner of Eskimo Candy. In late 2011, Mr. Hansen decided to put a PV system to support his operations there. He has been an upstanding citizen and, you know, occupant of that area where his building exceeds all the standards, all stucco, it's very nice, very clean. He wants to do things right here. And the big challenge has been, he has all the refrigeration, he has needs for energy. He's been approved by MECO to put in a system, and he has not been able to do that because the language in the current bill is not sufficient to do it. So the point of modifying this ordinance is...some of the specific language in there, the intent, was to be able to allow these kinds of things. And as

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Committee Chair, Don Couch, pointed out and was questioned to Mr. Swatek, the intent is to allow production on, as the language says, an “adjunct property”. That adjunct property could be a warehouse or a yard, but it’s allowed to provide that energy production for another property that is under permitted use. Now, Mr. Hansen’s current business is a restaurant, it’s number 55 on the list of permitted use; his yard is number 64, which is coming in here. And there is some language in there that has some concern to me because, as Mr. Swatek points out, it’s open to interpretation and it’s open to the interpretation of the Planning Department. And what I’m here to do is try to get assurance or affirmation from the Council of the intent of the language to make sure that that’s consistent. As Mr. Swatek pointed out, “small scale” is of concern ‘cause it’s not defined there. He needs significant production; he wants a 100-kilowatt system on there, which is, you know, the maximum of what’s allowed on a net meter. And so is that small scale or not? That’s a concern. It says that what happens there on the yard has to be wholly contained. And a PV system that maybe is on that yard but is putting energy through cabling and to an inverter in the adjunct property, does that classify as “wholly contained”? So there’s just...I believe that the intent could be interpreted very easily either way. And my concern is, he’s been waiting, you know, a year and a half for this. This is the opportunity to make sure that he can continue to provide, you know, valued services, a strong business to the community, you know, without having to continue to pay very high electric bills. He’s been green in all different ways, very energy conscious, and this is his way to be able to strengthen his business and continue to be an upstanding citizen. Thank you for your time.

CHAIR COUCH: Thank you. Members, any questions to the testifier? Mr. White?

COUNCILMEMBER WHITE: Thank you, Mr. Reiley for being here. So your main concerns are the term, or clarifying the term, “small scale” and “wholly contained”, is that correct?

MR. REILEY: That’s correct.

COUNCILMEMBER WHITE: Do you have any other concerns?

MR. REILEY: I think the only other words that I didn’t bring up but I do have a concern with is, when you look down on accessory uses, it says that, under the energy system, it says, “on same lot”. And so my concern is, if you’re producing it on the adjunct lot and it needs to go to approximate lot, you know, for that. But that wording also, again, could be, if somebody did not want to allow that, could be used to disallow it.

COUNCILMEMBER WHITE: Right.

MR. REILEY: Those are my three concerns. Thank you.

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COUNCILMEMBER WHITE: Okay, thank you. And then, Chair, for clarification, we have a document transmitted on October 23, 2013, is that the one that we're working off of?

CHAIR COUCH: Yes. Yeah, we'll be working off that one.

COUNCILMEMBER WHITE: Because I don't see anything, with relation to photovoltaics, in the...

CHAIR COUCH: Right. We're gonna have a discussion on that apparently.

COUNCILMEMBER WHITE: Okay. Yeah, it sounded like we had something in there already, but I couldn't find it anywhere.

CHAIR COUCH: We'll discuss that when we get into the discussion phase.

COUNCILMEMBER WHITE: Okay, thank you.

CHAIR COUCH: Yeah, thank you.

COUNCILMEMBER WHITE: Thank you, Chair. Thank you, Mr. Reiley.

MR. REILEY: Thank you.

CHAIR COUCH: Any further questions, Members? Seeing none, thank you, Dr. Reiley.

MR. REILEY: Thank you.

CHAIR COUCH: Alright, next is Tom Croly followed by Netra Halperin.

MR. CROLY: Aloha, Chair. Aloha, Committee members. I'm Tom Croly, and I'm speaking on behalf of the Maui Vacation Rental Association today. Before I get started, I just wanna recognize the accomplishment of one of our own, just last night, Shane Victorino as a member of the World Series winning Boston Red Sox. The second world championship for this young man and delivering the winning hit not only in the World Series but in the League championship series leading up to the World Series. I couldn't be prouder for him and for his family--certainly good reason to excuse his father from the meeting today--and for Maui in general. I'm here to testify on PC-23, the measure to establish short-term rentals as ag tourism. I would like to support this measure, but I think we may be moving it forward too soon. While actions taken at the State Legislature allow this measure to be heard and considered by the County to establish short-term rentals as part of ag tourism, I would like to see it go forward as a more comprehensive bill addressing ag tourism in general and not just the component of short-term rentals. I do

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have some fears that it could be confusing at the Commission level. The Commission is currently hearing a lot of these short-term rental permits, and it left with this you can go this way if you're bona fide ag tourism and you can go this way if you're not; yet, their job there is to determine that the Ag District is being used in a bona fide ag tourism...or ag way. I think it really is going to set up some confusion in the big picture. And, again, I'd like to see it considered more comprehensively. A little background on the short-term rental process, because some of you were here when we established it and some of you weren't. It requires two permits in the Ag District to get a Short-Term Rental Permit. One is the State permit, that is the Short-Term Rental Home Permit; and then the other is the State Special Use Permit. The State Special Use Permit is required because the State says, these are the restrictions in the Ag District, you can only use it for these things. So we have to get the State Special Use Permit in order to make the County permit valid. This measure that you might move forward would get rid of the need for the State Special Use Permit, but it would not get rid of the need for the Short-Term Rental Permit. You would still have to get the Short-Term Rental Permit. At this point, we've had about 130 applications come in for Short-Term Rental Permits, maybe half of them have been in the Ag District. And I wanna compliment the Planning Department for doing a great job in processing these. Some of them are still in process, a lot of them have been granted. But we do have a process that's working. We need to tweak that process. And soon, next year, we'll be back in this Committee to address tweaking that process; and, perhaps, that might be the time that we can further consider this measure as well. But I think, right now, sending this to Commission to consider without the bigger picture being considered of ag tourism and with the understand that it wouldn't allow someone to just say, okay, well I got bona fide ag tourism...or a bona fide farm so I can immediately open up a short-term rental, you can't. You still have to go through the process. And because the process requires Planning Commission approval, anytime there's another one within 500 feet, a fair number of these are gonna have to go through Planning Commission, anyway, irrespective of the fact that they may be an ag and have to get the SUP. They're gonna be forced to Planning Commission because they're likely gonna be within 500 feet of another existing one. So, by itself, I don't think this measure is solving enough problems for it to be a measure standing on its own and to warrant the consideration of the commissions and then back to this Committee and then to full Council. I'd rather see it done more comprehensively. Thank you.

CHAIR COUCH: Thank you, Mr. Croly. Members, any questions to the testifier?  
Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you, Chair. Thank you very much, Mr. Croly, for coming out this morning. Happy Halloween. Also, you mentioned earlier that your...I get where you're going with your analysis, but you made a statement wherein you said that if this ordinance was passed, therefore a State Special Use Permit would not...the

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permittee did not have to go and get a State Special Use Permit; now that is a little bit unsettling for me. But can you explain that statement, what you just said there?

MR. CROLY: Sure. At the State Legislature last year, they established a measure that said that if--I may need a little help with it--but, basically, if you have a bona fide farm as established by a State definition of farming, that short-term accommodations of less than 21 days would be permitted --

COUNCILMEMBER GUZMAN: Alright, right.

MR. CROLY: --okay. So then there was a proviso, provided that the County in which this is done, passes an ag tourism ordinance. So the measure that's being put forward today, I think, is that ag tourism ordinance in order to enable that State legislation. So it would be a way that the State law would say, okay, it's alright, you can have short-term accommodations on this ag lot, so the State wouldn't have that oversight that they currently do through the SUP. But it wouldn't say that, from the County's standpoint, that you can have it without a short-term rental permit.

COUNCILMEMBER GUZMAN: Okay. Thank you, yeah, I believe that was Senator --

MR. CROLY: English.

COUNCILMEMBER GUZMAN: --English's --

CHAIR COUCH: Yeah.

MR. CROLY: Right.

COUNCILMEMBER GUZMAN: --bill, yeah. Thank you.

MR. CROLY: Uh-huh.

CHAIR COUCH: Thank you, Mr. Guzman. Members, any further questions of the testifier? I have one. So, you know, it's my understanding that there's ag tourism bills being worked on or some things that have to deal with ag tourism. So you're saying, let's wait till we get that before we go with this --

MR. CROLY: Exactly.

CHAIR COUCH: --particular bill?

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MR. CROLY: And I've made an appointment with Mr. Guzman to talk about exactly that on Tuesday.

CHAIR COUCH: Okay.

COUNCILMEMBER GUZMAN: Yeah.

MR. CROLY: So, yeah, I think that there's more to ag tourism than just overnight accommodations, right?

CHAIR COUCH: Yeah.

MR. CROLY: And I think that if we're gonna come up with something we are calling an ag tourism bill in order to enable the State legislation, let's do it comprehensively and not just piecemeal.

CHAIR COUCH: Okay, thank you. Members, any further questions? Seeing none, thank you, Mr. Croly. Next up is Netra Halperin followed by Sydney Smith.

MS. HALPERIN: Aloha. Thanks for hearing us on this issue. Yes, I'm also gonna speak on PC-23. I think it's a good thing. I understand Tom Croly's point about not doing it piecemeal, but I think we should go forward with this that the ordinance is available, it's happening now. I think we should go forward. I think the main important thing is how important our small farms are. I'm also a member of the Farmers Union. I'm a planning consultant, so I help people get vacation rental and bed and breakfast permits. But as a member of the Farmers Union, I'm very committed to keeping small farms going and alive and thriving. And everybody knows, it's very difficult to fund a small farm these days with the cost of water, of labor, of land. And how cheap produce is that comes from third-world countries where all of their costs are really low even though they have to ship it from, you know, the Philippines, Malaysia, Mexico, et cetera. The cost of our produce is still more just 'cause our costs are so much more. And we wanna become sustainable, we want to be able to live on our own produce, because you never know about the planes and the boats, things could stop. And also for our economy, we want to support our small farms not just the big farms. And that's gonna, you know, help our economy, help our Upcountry economy, that's where I live; and so that's really important. And, Councilman Guzman, just to assuage your concerns, I think the people still do need to get a farm plan. They still have to show a farm plan, so it's not as if they can just, you know, completely ignore farming on their property. In my experience, as a consultant, is many people, they have their property, they've been living there enjoying it, you know, they have some landscaping. But when I go in to help them start with their permit, they start buffing out the farming. That's the first thing they do, okay, let's plant some trees, let's plant some more vegetables. So they actually increase their farming so that they can have

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their short-term accommodations. So I think it's a good ordinance requirement with the farm plan, 'cause it really is upping people's farming; it's not the opposite. It's not that people have this full-fledged farming operation and then they put short-term rental and they cut it down, it's the exact opposite. So I think that the ordinance as it is, where it's administratively has to go through the Department and has to get the farm plan, is taking care of that. And it still has to go through Rulan Waikiki, and she sends Malia out and she looks and they take photos and they designate, this is...farming is happening. And as far as the definition, I had a talk with the Tax Assessment Officer the other day and he said, no, the definition...I said, well, what exactly is farming, what's the difference between farming and gardening? And he said, well, that's that million-dollar question. You know, it hasn't totally really been ascertained; so, right now, it's growing stuff. So I mean that's the main point is that we wanna make sure that all the ag land is kept in agriculture. And whether it's highly producing or not, at least it's not getting paved over. I mean that's really the main point is that we don't lose it. And every time that the County gives another entitlement to these small farms, they increase their possibility of viability. 'Cause that's why people, the small farms, lose, it's 'cause they can't afford it. And so then they have to sell it to either a wealthy person from the Mainland and then it gets developed more or subdivided or condominiumized. So we need to do anything we can, give whatever entitlements we can to these small, family farms so that they can thrive and survive.

CHAIR COUCH: Thank you, Ms. Halperin. Members, any questions to the testifier? Seeing none, thank you.

MS. HALPERIN: Thank you.

CHAIR COUCH: Next up is Sydney Smith followed by Annette Niles.

MS. SMITH: Aloha. I'm here representing the Maui Coffee Association. And I do...

CHAIR COUCH: And can you state your name, please, and also put your...

MS. SMITH: Oh. I'm Sydney Smith. I'm the President --

CHAIR COUCH: There you go.

MS. SMITH: --of the Maui Coffee Association. I would like to see this go forward, because most of the farmers just can't take another delay on this. We've been talking about this for years. We can do an ag tourism bill and work on that later, but I would really like to get this, what I feel is a housekeeping measure, out of the way. I'm currently working, right now, with Gina Flammer and the Planning Department to get two short-term rentals open on my farm. And I'm also the President of the Coffee Association. So, several

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months ago, I asked the association members who were at that meeting--and there were about 20 people at that meeting--if they would like to have a short-term rental or a vacation rental on their farm, and every single person raised their hand. So this isn't just a few farmers that would like to do this, this is like every farmer in my organization would like to do this. Not every farm is the right type of location for a vacation cottage. A coffee farm, in particular, is a very good place for a vacation cottage, because it's generally an orchard type of thing, were not plowing and we're not generally using pesticides either. Most of our farms are organic. A flower farm is a good place for a vacation cottage. I can't say that, you know, every farm is gonna be a perfect location for this, but many of the type of farms that we have on Maui are really good for this. One of the things that I also really would like to stress to the Council is how many of my farmers work maybe one or two full-time jobs away from the farm. Having a vacation cottage or a short-term rental home on the farm allows them to stay on the farm to take care of their animals, to take care of their plants and they're still able to provide an income for their family. Another thing, of all of the farmers in our organization and almost all organizations, is farmers are now, on an average, 67 years old. The children of the farmers want nothing to do with the farm, because they see their parents working so hard for almost no compensation. If we want to make farming viable in Maui County or anywhere, we have to give them other opportunities for income. This is a way that we can really enhance Maui as a visitor destination as well, because it gives the visitor something else to do and to experience. I have so many people that want to come and tour my farm; and they want to pick coffee, they wanna see how it works, how everything works. To be able to stay on a coffee farm really gives people that experience. So I really think that although I agree with Tom Croly that we need an ag tourism ordinance, I would like to just see this single paragraph that we're talking about here go forward and then work on an ag tourism ordinance as well. Thank you.

CHAIR COUCH: Thank you. Members, questions to the testifier? Mr. Guzman?

COUNCILMEMBER GUZMAN: Oh, sure. Good morning, Sydney.

MS. SMITH: Hi.

COUNCILMEMBER GUZMAN: I realize your need and I guess your quest for expedition of this particular paragraph, but would it not be better if there were infrastructure or internal policies that could possibly back up this specific phrase? And I'm not sure whether the Planning Department is equipped right now, but would it be something that would be more wise if we actually started drafting an ag tourism activity ordinance and possibly--I know you're on the ag working group--could that be something that they could probably work on within a couple months or so and have that all done and have something that's complete and ready to go probably by February or March?

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MS. SMITH: Well I think we should do that, Don. I really do. But I don't think that bypassing this particular paragraph addition that that would negate doing that. I do think we should do an ag tourism bill; but as I read this paragraph, just allowing, you know, short-term rental homes on bona fide farms, I don't see how that would inhibit us working on an ag tourism bill. I may be incorrect in that, but I don't see how this one single paragraph in addition to the way it reads now would hurt that. I think that it's a very simple...this one, little paragraph seems quite simple to me. You know, the only part that was underlined was just like one, short, little addition.

COUNCILMEMBER GUZMAN: Right.

MS. SMITH: And so I don't think that that would, you know, kill an ag tourism bill in the future.

COUNCILMEMBER GUZMAN: And I think that's the million-dollar question, is like, what seems to be simple doesn't quite seem to be on the face, prima facie simple. But we know we'll get to the intricates of it and the details and when we discuss it with the Planning Department and see how simple that this is in applying.

MS. SMITH: Well, and as you know, I'm available, you know, to come in and hash these things out. Mr. Couch and Mr. Guzman, you know me, you know, I will drop everything --

COUNCILMEMBER GUZMAN: Right.

MS. SMITH: --and come in and work. Gladys, you know that, too. And sometimes it takes somebody who has dirt under their fingernails to work on things like this. And I know Annette Niles is here today, too, and she will do the same thing.

COUNCILMEMBER GUZMAN: Thank you.

CHAIR COUCH: Okay. Thank you. Mr. White then followed by Chair Baisa.

COUNCILMEMBER WHITE: Thank you, Chair. Thank you for being here today. And I tend to agree with you. My recollection is that the ag tourism bill was focused more on making it possible for farmers to set up shop to sell product and have people come and visit the farms --

MS. SMITH: Uh-huh.

COUNCILMEMBER WHITE: --on a, you know, on a daytime, you know, visit and go back somewhere else type of opportunity. So I believe that's the basis of the ag tourism bill that's been put forth on the Big Island. So I've...

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MS. SMITH: Yeah, daytime activities for the most part.

COUNCILMEMBER WHITE: Right. So I tend to agree with you that this is somewhat stand alone. So would you...what is your thoughts on the focus of an ag tourism bill?

MS. SMITH: I would really like to work on it. And there were some parts of the Big Island bill that I did not like. One of the things was, you couldn't have anything after 5:00 p.m. I just thought that was crazy is that you could only be open I think five days a week. You know, in a visitor industry, why would you want to make the farm be closed two days a week? Farmers work every day. You know, and then that was what was adopted, and I just didn't understand it. And then we have people going to see the sunrise on Haleakala when it's dark outside, you know, and you had all these provisions that you couldn't be open except during daylight hours. And we have Harriet Witt that does these wonderful star-gazing type of presentations; and Eve Hogan, which is right across the street from me, who does the moonlit labyrinth walks; and they talk about the planting and growing traditions of the Hawaiians. And none of those things would be able to be done during the day. And so, you know, the Big Island, while I applaud them for tackling it, there were some provisions and that I could not see why in the world, you know, they put those in there.

COUNCILMEMBER WHITE: Uh-huh. Thank you. Thank you, Chair.

CHAIR COUCH: Okay. Thank you. Ms. Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair; and thank you, Sydney, for being here. I certainly understand your frustration about we want a bill passed. In 2007, when I was working on the bed and breakfast ordinance--that was my baptism on the Council--there was a lot of discussion about whether or not B&Bs should be allowed on ag. And there were people passionately opposed to allowing it, because they felt that it would, you know, hurt ag. I saw it very differently in talking to the farmers that I talked to, because they were all financially struggling and they just needed a little bit more income so that they could stay in business. And I saw it as a really innocuous way, as long as you're on a farm, a real farm. You know, you don't have neighbors right next door, what better place to use a extra cottage and have some folks stay in it and derive some income. And so I think that's where we got to where we're at. But, simultaneously, there was a group--I was working with Lani Weigert--and they were trying to get an ag tourism bill passed then, so operations like the Lavender Farm, you know, would be okay.

MS. SMITH: Uh-huh.

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COUNCILMEMBER BAISA: And, for me, I think having tourists have options is really, really important to our tourism industry. You know, not everybody that comes here is the typical tourist who wants to get to a hotel and lie by the pool and have Mai Tais. We're getting more and more of these folks that wanna get out and see and do different things, and I think Maui has to provide that. So I wanna see this bill go through; but, today, listening to Mr. Croly, you know, I'm torn now. Because as much as I wanted this to go forward immediately, when somebody like Tom Croly who has been in the trenches with me from 2007 and worked really hard, hand in hand with me on the B&B ordinance and the STR with Mr. Couch on the STR and goes to all of these Planning Commission meetings and listens to, you know, the debate and the concerns that the commissioners have, and when Tom says, I think they might be more confused, it kinda gives me pause because I don't spend as much time there as he does. And so I think he's trying to tell us something. And I may ask Mr. Couch if we can probe a little deeper with Mr. Croly when we get to making a decision here, 'cause I really wanna understand what he's afraid of, because we don't wanna set any of these back. Like you, I want to see an ag tourism bill passed and the farms have, real farms doing real ag, have the opportunity to have additional income.

MS. SMITH: Yeah, we really need it.

COUNCILMEMBER BAISA: So, you know, I understand your frustration, you want it to go forward, but I wanted you to understand why I may be questioning.

MS. SMITH: Well, and I understand you, especially, you know, you want what's best for the farm, and that's all I want, too. And I think that most of the Council here, you know, feels the very same way - they want what's best for the farm. But you were talking about, you know, 2007, you know, when some of these things were on the table here. Not every farm that I know can wait another six or seven years to get something...I mean if they're 67 now, you know, in seven years, you know, they're gonna be in their 70s. And those children that may come back to the farm and may work on the farm, they're just not gonna do it. And I think that while that sounds like an extreme case, you know, luring the children back to the farm, this is every farmer, this is not just a few farmers, this is every farmer that I know that has children, none of them want to come back and work on the farm. And none of the farmers that I know want to sell their farm to a developer and take all the money and go sit in a condo the rest of their lives or in a nursing home, because our lifestyle is to work the land; that's what we wanna do, that's why we got into farming, not because we wanted to get rich. We love to grow things, we love our animals, you know, this is the lifestyle that we chose even though we knew it came with hard, hard work. Having a short-term rental home allows us to share our knowledge that's dying. And the knowledge that our farmers have and the traditions of farming in Maui, that is a dying tradition and we want to keep it, we wanna be able to pass this along to not just our children, but to the visitors and the next generation.

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COUNCILMEMBER BAISA: I totally understand where you're coming from, but I think we're gonna have a lively debate here today because of, you know, the feelings we have about wanting to help the farmers immediately stay in farming. This morning, I got an e-mail from a friend of mine who is a long-time farmer, and I would have never expected to hear it from him; but he said, our finances are so bad, that unless you guys get this bill going shortly and I am able to open a STR, I may give it up because I just can't afford it anymore.

MS. SMITH: I hear that every day.

COUNCILMEMBER BAISA: Yeah. And so, you know, that's the kind of thing that's going on inside, we're familiar and we know. So we'll try to do our best. Thank you for coming.

MS. SMITH: Thank you, Gladys. Thank you, Don.

CHAIR COUCH: Thank you. I have a couple questions, too. And first question is, would you be willing to stay for a little bit if we need you and Mr. Croly as a resource?

MS. SMITH: Yes.

CHAIR COUCH: Okay. The other question I have, right now, this is just saying, short-term rental home, which means nobody...the owner doesn't live on property.

MS. SMITH: Yes.

CHAIR COUCH: Would you be wanting or open to having that also say, bed and breakfast?

MS. SMITH: Of course.

CHAIR COUCH: 'Cause I would rather...I think I would rather see more bed and breakfast than short-term rental home in any case.

MS. SMITH: Well, you know, I would like to point out something, Mr. Couch. Most farmers have more than one tax map key. This is an issue that has come up over and over again.

CHAIR COUCH: Yes.

MS. SMITH: I have a farm plan. I have one farm, but I have to do two farm plans. And then they wanna know what percentage of your produce comes from which tax map key. No one farms that way. No one has their cattle running out in a field and they're crossing over an invisible line from one tax map key to another. This is a real problem for

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farmers. So short-term rental home is just a house that's on the same farm, but there's that invisible line where the tax map key is, this number on this side and this number on that side. So if you're cottage happens to be on the tax map key where your residence is, then that's a B&B. But if it happens to be across that invisible line that's still on your farm, then it's a short-term rental home.

CHAIR COUCH: Okay.

MS. SMITH: It took me awhile to get that straight in my head of, you know, like what the difference was, 'cause it's just one farm. I don't have any little lines on my property that show me where those things are. I would have to go find the post and pegs and, you know, put some sight lines on there. I have no idea, really, where those lines are. So it's an arbitrary thing, you know, that...I know my friend, Annette Niles here, she has five tax map keys. So and most farms have many tax map keys because they have either come down through the family and, you know, this family member died and, of course, they didn't have anyone that wanted to farm; and so it went to the one who was willing, you know, to do the work. And so it's really just one farm, and, you know, sometimes there's several families on one farm. But we don't really know where the lines are. So I would, of course, support putting "bed and breakfast" with the "short-term rental home" on there.

CHAIR COUCH: Okay. Thank you. And, Members, that kind of opens up another can of worms is, do we want--I like your comment about, you know, you don't know where your lines are--but do we want, also, somebody who doesn't even live on the property or has anybody taking care of the property other than leasing it out to somebody else to farm to allow that to be a short-term rental, too, because the owner's not there? So those are some of the things that we're gonna have to discuss. And just to remind Members and the testifiers as well that this is just a resolution to send it to the Planning Commission.

MS. SMITH: Uh-huh.

CHAIR COUCH: It still has to go to the Planning Commission. And we wanna hopefully get it tight enough that the Planning Commission understands our intent and says, okay, let's go, as opposed to taking forever to hear it as well. So those are some of the things we'll be discussing today.

MS. SMITH: Okay.

CHAIR COUCH: So thank you very much for being willing to stick around as a resource person as well. Thank you.

MS. SMITH: Alright, thank you.

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CHAIR COUCH: Members, any questions further of Ms. Smith? Seeing none, thank you. Ms. Niles, hang on a second. We're gonna go to the remote districts. Molokai, do you have anybody there ready to testify?

MS. ALCON: There's no one here on Molokai waiting to testify.

CHAIR COUCH: Okay. Lanai, anybody there wanting to testify?

MS. FERNANDEZ: There is no one waiting to testify on Lanai.

CHAIR COUCH: Okay. And Hana, anybody waiting to testify?

MS. LONO: There's no one at the Hana Office waiting to testify, Chair.

CHAIR COUCH: Okay, ladies, we'll get back to you when the rest of the testifiers are done here. Thank you. Alright, Annette Niles is the next testifier followed by Jeff Hansen.

MS. NILES: Hi, good morning, everyone. My name is Annette Niles. I'm here because of...I am a rancher and a farmer. And, you know, I think it's a brilliant idea. I think it's a brilliant idea to put, you know, having a vacation rental on a farm, because I have so many people that call me over and over, and even plead with me, to come on my property and stay and even help on the farm. They wanna get away from the hotels, they wanna get away from...they already did it, they came, they did it. Maui has only so much things to do, you know what I mean? They wanna be on real farms, real. So I think it's a great idea, but my point is, it's going back to my children. My kids are all in the Mainland right now. They left because of this. You know, we couldn't keep them here. So they in the Mainland and, now, they don't wanna come back, they don't wanna come back--why?--because we can't do nothing with the properties. Sell it Ma, come up here. I don't wanna go to the Mainland. I want them back home where they belong. This is their roots not them coming here and this people going there. This is our roots. We need our local kids, our local people back home where they belong, you know. When you have a granddaughter that just left for college and says, you know, I don't see myself coming home--because she sees me here grumbling, arguing up here, you know--what is there to come home to? But if we have this, we have a chance to have a vacation rental and grow more income and they'll see things happening where it's helping us as ranchers and farmers, I foresee them coming back. But, right now, they have nothing to come home to. And that's all I really have to say about it, but I am in favor of these vacation rentals. And again, like Sydney said, I have five different parcels, you know; and I want it to be that I can do this on all of my parcels and not only one parcel. 'Cause I'm a farmer on all of my parcels, I'm a rancher, cattle moves from each parcel to each; and I also have my

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other stuff on each and every one of them. I'm a real farmer, okay, I'm not a fake farmer. I'm a real, real, real farmer. Thank you very much.

CHAIR COUCH: Thank you, Ms. Niles. Members, any questions of the testifier? Mr. Guzman?

COUNCILMEMBER GUZMAN: Good morning, Annette.

MS. NILES: Good morning, Don.

COUNCILMEMBER GUZMAN: Good to see you.

MS. NILES: Same here.

COUNCILMEMBER GUZMAN: Just for an explanation, I know you have five map key --

MS. NILES: Yeah.

COUNCILMEMBER GUZMAN: --lots, and so would you eventually then put five different vacation homes on each of the lots?

MS. NILES: Well, Don, each and every one almost has houses on 'em already.

COUNCILMEMBER GUZMAN: Oh, I see.

MS. NILES: Yeah, 'cause I went from one to the other, move from one to the other; and then the kids, you know, they were in one, you know, going...but, yeah, I do. And then I obtained my parents so it's another one, you know, and it's all on ag. I planted all the ag --

COUNCILMEMBER GUZMAN: Right.

MS. NILES: --they didn't have ag, I put it in, 'cause I'm a ag person. So I ended up putting all that into ag, you know, the farming part and what I could do.

COUNCILMEMBER GUZMAN: Okay, thank you.

MS. NILES: You're very welcome.

CHAIR COUCH: Thank you. Members, any further questions to the testifier? Mr. White?

COUNCILMEMBER WHITE: Thank you. Good morning, Annette.